

1 Joseph J. Tabacco, Jr. (75484)
2 Christopher T. Heffelfinger (118058)
3 Anthony D. Phillips (259688)
BERMAN DEVALERIO
4 One California Street, Suite 900
San Francisco, CA 94111
5 Telephone: (415) 433-3200
Facsimile: (415) 433-6282
6 Email: jtabacco@bermandevalerio.com
cheffelfinger@bermandevalerio.com
aphillips@bermandevalerio.com

7 Robert M. Kornreich
8 Carl L. Stine
WOLF POPPER LLP
9 845 Third Avenue
New York, NY 10022
10 Telephone: (212) 759-4600
Facsimile: (212) 486-2093
11 Email: rkornreich@wolffpopper.com
cstine@wolffpopper.com

12 *Interim Co-Lead Counsel for Plaintiff*

13 John C. Dwyer (136533)
14 Angela L. Dunning (212047)
COOLEY LLP
15 Five Palo Alto Square 3000 El Camino Real
Palo Alto, CA 94306
16 Telephone: (650) 843-5000
Facsimile: (650) 849-7400
17 Email: dwyerjc@cooley.com
adunning@cooley.com

18 *Attorneys for Defendant Kudelski Interactive
Cayman, Ltd.*

20
21
22
23
24
25
26
27
28
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

22 IN RE OPENTV CORP. SHAREHOLDER
23 LITIGATION

24 Case No. C-09-04896 MHP

25 [PROPOSED] ORDER
26 PRELIMINARILY APPROVING
27 SETTLEMENT AND PROVIDING FOR
28 NOTICE

1 WHEREAS, the parties to the above-captioned consolidated action (the "Consolidated
2 Action") have entered into a Stipulation and Agreement of Compromise, Settlement and Release
3 dated July 9, 2010 (together with all exhibits thereto, the "Stipulation"), which sets forth the
4 terms and conditions of a proposed settlement of the Action (the "Settlement") and provides for
5 dismissal of the Action on the merits and with prejudice and the release of all Settled Claims
6 against all Released Persons;

7 WHEREAS, the parties have applied to the Court pursuant to Rule 23(e) of the Federal
8 Rules of Civil Procedure for an order preliminarily approving the Stipulation and the Settlement,
9 certifying the Consolidated Action as a class action for settlement purposes, and directing notice
10 to the Class;

11 WHEREAS, no claims administration proceeding is necessary as (1) the tender offer for
12 shares of Class A common stock of OpenTV Corp. ("OpenTV") that gave rise to the Action has
13 closed and OpenTV is no longer a publicly traded company, (2) the remedies and disclosures
14 sought by Plaintiffs which are the subject of the proposed Settlement have already been
15 provided, (3) there will be no settlement fund to distribute to Class members, and (4) Defendant
16 Kudelski Interactive Cayman, Ltd. ("KIC") has consented to providing notice in the manner
17 described below; and

18 WHEREAS, the Court has read and considered the Stipulation and the Settlement provided
19 for therein and good cause appearing,

20 NOW, THEREFORE, IT IS HEREBY ORDERED:

21 1. This Order (the "Preliminary Approval Order") hereby incorporates by reference
22 the definitions in the Stipulation, and all terms used herein shall have the same meanings as set
23 forth in the Stipulation.

24 2. The Court hereby preliminarily approves the Settlement of the Consolidated
25 Action as set forth in the Stipulation as fair, just and reasonable and adequate to the Class,
26 subject to further consideration at the Final Settlement Hearing described below.

27

28

1 **CLASS CERTIFICATION**

2 3. The Court hereby conditionally certifies pending a final hearing, a non-opt-out
3 class pursuant to Rules 23(a), 23(b)(1) and (b)(2) of the Federal Rules of Civil Procedure, on
4 behalf of all Persons holding Class A shares of OpenTV between October 5, 2009 and November
5 25, 2009, inclusive, and their successors in interest and transferees, immediate and remote (the
6 "Class"). Excluded from the Class are Defendants and their affiliates, successors in interest,
7 predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees,
8 immediate or remote, and any Person acting for or on behalf of, or claiming under any of them,
9 and each of them.

10 4. The Court conditionally finds, for the purpose of the Settlement only, that the
11 prerequisites for a class action under Rules 23(a), (b)(1) and (b)(2) of the Federal Rules of Civil
12 Procedure have been satisfied in that: (a) the number of Class members is so numerous that
13 joinder of all members thereof is impracticable; (b) there are questions of law and fact common
14 to the Class; (c) the claims of plaintiff Charles Michael Foley are typical of the claims of the
15 Class he seeks to represent; (d) Mr. Foley has fairly and adequately represented the interests of
16 the Class; (e) prosecuting separate actions by or against individual Class members would create a
17 risk of (i) inconsistent or varying adjudications with respect to individual Class members that
18 would establish incompatible standards of conduct for Defendants or (ii) adjudications with
19 respect to individual Class members that, as a practical matter, would be dispositive of the
20 interests of the other members not parties to the individual adjudications or would substantially
21 impair or impede their ability to protect their interests; and (f) in conducting the tender offer,
22 Defendant KIC has allegedly acted or refused to act on grounds that apply generally to the Class,
23 such that the relief afforded pursuant to the Settlement appropriately affects the Class as a whole.

24 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of
25 the Settlement only, plaintiff Charles Michael Foley is appointed as the Class Representative
26 (hereinafter, "Lead Plaintiff") and Wolf Popper LLP and Berman DeValerio are appointed as
27 Co-Lead Counsel for the Class.

1 **PLAN OF NOTICE**

2 6. KIC is hereby directed to provide notice of the Settlement to the Class as follows
 3 (the "Plan of Notice"):

4 A. **OpenTV Website Posting.** Within ten (10) business days of entry of this
 5 Preliminary Approval Order, KIC, at its own expense, shall cause OpenTV to post an easily
 6 accessible and visible banner to appear on the home page of the OpenTV corporate website,
 7 located at www.opentv.com, stating the following: "OPENTV ANNOUNCES A CLASS
 8 ACTION SETTLEMENT OF *IN RE OPENTV CORP. SHAREHOLDER LITIGATION*, CASE
 9 NO. C-09-04896 MHP (N.D. CA), ARISING FROM THE KUDELSKI GROUP'S OCTOBER
 10 5, 2009 TENDER OFFER TO ACQUIRE CLASS A SHARES OF OPENTV." The banner shall
 11 allow any visitor who clicks on it to link to a webpage from which visitors may access and
 12 download copies of the following documents: (1) the Notice substantially in the form annexed as
 13 Exhibit B-1 to the Stipulation; (2) the Stipulation; (3) a copy of the proposed form of Judgment
 14 and Final Order of Dismissal in the form annexed as Exhibit C to the Stipulation; (4) a copy of
 15 this Preliminary Approval Order; and (5) such other and further orders as the Court may issue in
 16 the Consolidated Action following the date of this Preliminary Approval Order. The webpage
 17 accessible from the banner shall also provide that inquiries regarding any aspect of the
 18 Stipulation and Settlement, including the Notice, should be directed to Co-Lead Counsel, and
 19 shall provide Co-Lead Counsel's respective names, addresses and phone numbers.

20 B. **Press Release.** Within ten (10) business days of entry of this Preliminary
 21 Approval Order, KIC, at its own expense, shall cause a press release, substantially in the form
 22 annexed hereto as Exhibit B-2 to the Stipulation, to be issued by a national news service.
 23 Thereafter, KIC, at its own expense, shall cause the same press release to be issued once per
 24 week for two additional, consecutive weeks.

25 C. **Class Action Fairness Act.** KIC shall comply with all applicable notice
 26 requirements under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA").

27 7. The Court approves the Plan of Notice, and finds that the form and method of
 28 notice specified herein constitutes due and sufficient notice to all Persons entitled to receive such
 [C-09-04896 MHP] [PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND
 PROVIDING FOR NOTICE

1 notice and shall fully satisfy the requirements of due process, Rule 23 of the Federal Rules of
2 Civil Procedure, the Rules of Court and all other applicable laws and rules.

3 8. No later than October 25, 2010, counsel for KIC shall cause to be filed with the
4 Clerk of this Court affidavits or declarations of the person or persons under whose general
5 direction the Plan of Notice was implemented, showing that the Plan of Notice has been
6 implemented in accordance with this Preliminary Approval Order.

7 **HEARING: RIGHT TO BE HEARD**

8 9. There shall be a hearing on **November 15, 2010, at 2:00 p.m.** (the "Final
9 Settlement Hearing") before the Honorable Marilyn H. Patel at the United States District Court
10 for the Northern District of California, 450 Golden Gate Avenue, Courtroom 15, San Francisco,
11 CA 94102, to determine:

12 A. Whether the proposed Settlement of the Consolidated Action on the terms
13 and conditions provided for in the Stipulation is fair, reasonable, adequate, and should be
14 approved by the Court;

15 B. Whether a Judgment as provided in the Stipulation should be entered; and

16 C. The amount of attorneys' fees and expenses, if any, that should be
17 awarded to Plaintiffs' Counsel and the amount of any incentive award to Lead Plaintiff.

18 10. Papers in support of the Settlement and Co-Lead Counsels' Attorneys' Fee and
19 Incentive Award Application shall be filed no later than October 15, 2010. Reply papers, if any,
20 shall be filed no later than November 8, 2010.

21 11. Any member of the Class may enter an appearance in the Consolidated Action, at
22 his, her, or its own expense, individually or through counsel of their own choice. If they do not
23 enter an appearance, they will be represented by Co-Lead Counsel, who are hereby authorized to
24 act on behalf of the Class with respect to all acts required by, or which may be taken pursuant to,
25 the Stipulation, or such other acts that are reasonably necessary to consummate the proposed
26 Settlement set forth in the Stipulation.

27 12. Any member of the Class may appear at the Final Settlement Hearing and show
28 cause why the proposed Settlement embodied in the Stipulation should or should not be
[C-09-04896 MHP] [PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE

1 approved as fair, reasonable and adequate, or why the Judgment should or should not be entered
2 thereon, and/or to present opposition to the Attorneys' Fee and Incentive Award Application.
3 However, no Person shall be heard or entitled to contest the approval of the terms and conditions
4 of the Settlement, or, if approved, the Judgment to be entered thereon, or the Attorneys' Fee and
5 Incentive Award Application unless that Person has (i) served written objections, by hand or first
6 class mail, in the manner specified in the Notice upon the following counsel for receipt no later
7 than November 1, 2010:

8 BERMAN DEVALERIO
9 Christopher T. Heffelfinger
One California Street, Suite 900
San Francisco, CA 94111
10 Telephone: (415) 433-3200
Facsimile: (415) 433-6282

11 *Co-Lead Counsel for Plaintiffs*

COOLEY GODWARD KRONISH LLP
Angela L. Dunning
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
Telephone: (650) 843-5000
Fax: (650) 849-7400

12 *Attorneys for Defendant Kudelski Interactive
13 WOLF POPPER LLP
14 Carl L. Stine
15 845 Third Avenue
New York, New York 10022
16 Tel: 212 451-9612
Fax: 212 486-2093
17 *Co-Lead Counsel for Plaintiffs*
18 and (ii) filed said objections, papers and briefs with the Clerk of the United States District Court
19 for the Central District of California. If the objector intends to appear at the Final Settlement
20 Hearing, he, she or it must also comply with the requirements set forth in the Notice for making
21 such an appearance. Any Class Member who does not make his, her or its objection in the
22 manner provided for herein shall be deemed to have waived such objection and shall forever be
23 foreclosed from making any objections to the fairness, reasonableness or adequacy of the
24 Settlement as incorporated in the Stipulation or to Attorneys' Fee and Incentive Award
25 Application. The manner in which a notice of objection should be prepared, filed and delivered
26 shall be as stated in the Notice.
27 13. Defendants have denied any liability, fault or wrongdoing of any kind in
28 connection with the allegations in the Consolidated Action, and as such, neither the Stipulation,
[C-09-04896 MHP] [PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE*

1 nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it,
2 shall be construed as an admission or concession by any Defendant or any other Released Person
3 of the truth of any of the allegations in the Consolidated Action, or of any liability, fault or
4 wrongdoing of any kind.

5 14. The Court reserves the right to extend any of the deadlines set forth in this
6 Preliminary Approval Order or to adjourn or continue the Final Settlement Hearing, or any
7 adjournment or continuance thereof, without further notice of any kind to the Class. The Court
8 may approve the Settlement, with such modifications as may be agreed to by the Settling Parties,
9 if appropriate, without further notice to the Class.

10 15. The Court further retains jurisdiction over this Action to consider all further
11 matters arising out of or connected with the Settlement reflected in the Stipulation, including
12 enforcement of the releases provided for in the Stipulation.

13 16. All Class members shall be bound by all determinations, orders and judgments in
14 the Consolidated Action concerning the Settlement, whether favorable or unfavorable to the
15 Class.

16 17. All proceedings in the Consolidated Action, other than such proceedings as may
17 be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and
18 suspended until further order of this Court.

19 18. Pending final determination of whether the Settlement should be approved,
20 Plaintiffs and all members of the Class, and each of them, are barred and enjoined from
21 commencing, prosecuting, instigating or in any way participating in the commencement or
22 prosecution of any action asserting any Settled Claims, either directly, representatively,
23 derivatively or in any other capacity, against any Released Person.

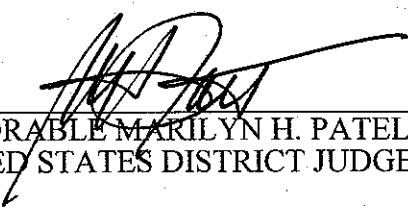
24 19. If the Court approves the Settlement following the Final Settlement Hearing, the
25 Judgment shall be entered as described in the Stipulation.

26 20. If the Settlement, including any modification made with the agreement of the
27 Settling Parties, is not approved by the Court or for the Effective Date does not occur for any
28 reason whatsoever, the Settlement (including any modification thereof made with the consent of
[C-09-04896 MHP] [PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE

1 the parties as provided for in the Stipulation), and conditional Class certification herein and any
2 actions taken or to be taken in connection therewith (including this Order and any judgment
3 entered herein) shall be terminated and shall be rendered null and void to the extent provided by,
4 and in accordance with, the Stipulation and shall be vacated and, in such event, all orders entered
5 and releases delivered in connection herewith shall be null and void to the extent provided by
6 and in accordance with the Stipulation. In that event, neither the Stipulation, nor any provision
7 contained in the Stipulation, nor any action undertaken pursuant thereto, nor the negotiation
8 thereof by any of the Parties shall be deemed an admission or received as evidence in this or any
9 other action or proceeding.

10 IT IS SO ORDERED.

11 Dated: July 26, 2010

12 
13 HONORABLE MARILYN H. PATEL
14 UNITED STATES DISTRICT JUDGE

15
16
17
18
19
20
21
22
23
24
25
26
27
28